

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	Case No. 01-01139 JKF
W.R. Grace & Co., <i>et al.</i>	:	(Jointly Administered)
	:	
Debtors.	:	

**DECLARATION OF JEFFREY M. BOERGER**

I, Jeffrey M. Boerger, do hereby declare as follows:

1. I am an attorney associated with the law firm of Drinker Biddle & Reath LLP, with offices at One Logan Square, 18<sup>th</sup> & Cherry Streets, Philadelphia, Pennsylvania 19103.

2. I am a member in good standing of the bars of the State of Illinois, the Commonwealth of Pennsylvania, and the State of New Jersey. I have been admitted to practice *pro hac vice* before this Court in the instant matter.

3. I represent OneBeacon America Insurance Company ("OneBeacon") and Seaton Insurance Company ("Seaton") in this matter.

4. I make this declaration in support of the Phase II Trial Brief of *Creditors* OneBeacon America Insurance Company and Seaton Insurance Company in Opposition to Confirmation of Amended Joint Plan of Reorganization ("Trial Brief"), as well as to put certain information and documents before the Court that are pertinent to the Trial Brief.

5. Attached as Exhibit 1 is a true and correct copy of excerpts from the Deposition of Jeffrey Posner, taken and transcribed on May 6, 2009, including certain exhibits thereto.

6. Attached as Exhibit 2 is a true and correct copy of the Original Complaint filed on or about March 18, 2002, in an adversary proceeding before this Court entitled *Official Committee of Asbestos Personal Injury Claimants and Official Committee of Asbestos Property*

*Damage Claimants of W.R. Grace & Co v. Fresenius Medical Care Holdings, Inc. and National Medical Care, Inc.*, Adv. No. 02-2011 (the “Fresenius Adversary Proceeding”). This document was downloaded from the bankruptcy court’s public electronic case filing system.

7. Attached as Exhibit 3 is a true and correct copy of the Answer to Original Complaint filed by Fresenius Medical Care Holdings, Inc. and National Medical Care, Inc. filed on April 1, 2002 in the Fresenius Adversary Proceeding. This document was downloaded from the bankruptcy court’s public electronic case filing system.

8. Attached as Exhibit 4 is a true and correct copy of excerpts from the Form S-4 Registration Statement filed with the United States Securities and Exchange Commission by W.R. Grace & Co. (to be renamed Fresenius National Medical Care, Inc.) (EIN 13-3461988) on August 2, 1996, SEC File No. 333-46281, and referenced in Plan Definition No. 124 (defining “Fresenius Transaction”). This document is a public record, downloaded from the SEC’s publicly available EDGAR database. The full text of this Form S-4 Registration Statement is available at <http://edgar.sec.gov/Archives/edgar/data/42872/0000950123-96-004024.txt>.

9. Attached as Exhibit 5 is a true and correct copy of the Original Complaint filed on or about March 18, 2002, in an adversary proceeding before this Court entitled *Official Committee of Asbestos Personal Injury Claimants and Official Committee of Asbestos Property Damage Claimants of W.R. Grace & Co v. Sealed Air Corporation and Cryovac, Inc.*, Adv. No. 02-2010 (the “Sealed Air Adversary Proceeding”). This document was downloaded from the bankruptcy court’s public electronic case filing system.

10. Attached as Exhibit 6 is a true and correct copy of the Answer and Affirmative Defenses of Defendants Sealed Air Corporation and Cryovac, Inc. to Plaintiffs’ Original

Complaint, filed on or about April 1, 2002 in the Sealed Air Adversary Proceeding. This document was downloaded from the bankruptcy court's public electronic case filing system.

11. Attached as Exhibit 7 is a true and correct copy of excerpts from the Form S-4 Registration Statement filed with the United States Securities and Exchange Commission by W.R. Grace & Co. (to be renamed Sealed Air Corporation) (EIN 65-0654331) on February 13, 1998, SEC File No. 333-46281, and referenced in Plan Definition No. 92 (defining "Cryovac Transaction"). This document is a public record, downloaded from the SEC's publicly available EDGAR database. The full text of this Form S-4 Registration Statement is available at <http://edgar.sec.gov/Archives/edgar/data/1012100/0000950103-98-000147.txt>.

12. Attached as Exhibit 8 is a true and correct copy of the Order Disallowing and Expunging Certain of the Claims of Seaton Insurance Company and OneBeacon America Insurance Company, dated May 3, 2007 and entered in this bankruptcy case (the "POC Order," also available at D.I. 15503), including all exhibits thereto. Exhibit "A" to the POC Order is a true and correct copy of Proof of Claim No. 15531, filed by Seaton Insurance Company, and the related Stipulation and Order Regarding Proofs of Claim of Seaton Insurance Company (also available at D.I. 9519). Exhibit "B" to the POC Order is a true and correct copy of Proof of Claim No. 15593, filed by OneBeacon America Insurance Company, and the related Stipulation and Order Regarding Proofs of Claim of OneBeacon America Insurance Company (also available at D.I. 9518). These documents were downloaded from the bankruptcy court's public electronic case filing system.

13. Attached as Exhibit 9 is a true and correct copy of the Complaint for Declaratory and Other Relief, including all exhibits thereto, filed on or about September 2, 2004 in an adversary proceeding before this Court entitled *The Scotts Company v. American Employers'*

*Insurance Company, et al.*, Adv. No. 04-55083-JKF (the "Scotts Adversary Proceeding"). This document was downloaded from the bankruptcy court's public electronic case filing system.

14. Attached as Exhibit 10 is a true and correct copy of the Class 6 Asbestos PI Claims (Indirect PI Trust Claims) Ballot provided to OneBeacon in connection with the solicitation and tabulation of votes to accept or reject the First Amended Joint Plan of Reorganization Under Chapter 1 of the Bankruptcy Code of W.R. Grace & Co., et al., the Official Committee of Asbestos Personal Injury Claimants, the Asbestos PI Future Claimants' Representative, and the Official Committee of Equity Security Holders Dated February 27, 2009 (the "Plan").

15. Attached as Exhibit 11 is a true and correct copy of the Class 6 Asbestos PI Claims (Indirect PI Trust Claims) Ballot provided to Seaton in connection with the solicitation and tabulation of votes to accept or reject the Plan.

16. Attached as Exhibit 12 is a true and correct copy of the Class 9 General Unsecured Claims Ballot provided to OneBeacon in connection with the solicitation and tabulation of votes to accept or reject the Plan.

17. Attached as Exhibit 13 is a true and correct copy of Proof of Claim No. 8112, filed by Fresenius Medical Care Holdings, Inc. This document was obtained by request from Rust Consulting, Inc., the designated claims processing agent for this bankruptcy case.

18. Attached as Exhibit 14 is a true and correct copy of Proof of Claim No. 14339, filed by Sealed Air Corporation. This document was obtained by request from Rust Consulting, Inc., the designated claims processing agent for this bankruptcy case.

19. Attached as Exhibit 15 is a true and correct copy of excerpts from the Deposition of Richard Finke, taken and transcribed on May 13, 2009, including certain exhibits thereto.

20. Attached as Exhibit 16 is a true and correct copy of excerpts from the Deposition of David T. Austern, taken and transcribed on May 15, 2009.

21. Attached as Exhibit 17 is a true and correct copy of excerpts from the Deposition of Peter Van N. Lockwood, taken and transcribed on May 1 and 4, 2009.

22. Attached as Exhibit 18 is a true and correct copy of the Objections and Responses of the Official Committee of Asbestos Personal Injury Claimants to Discovery Propounded By Government Employees Insurance Company and Columbia Insurance Company, served on or about March 6, 2009.

23. Attached as Exhibit 19 is a true and correct copy of the Expert Report of James B. Shein, dated March 16, 2009 (also available at Dkt. No. 21020).

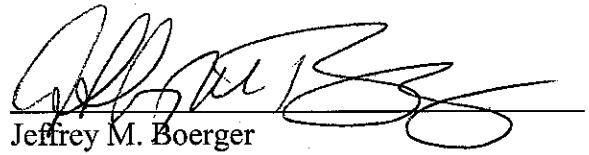
24. Attached as Exhibit 20 is a true and correct copy of the Memorandum Order signed and entered on or about December 7, 2005 in a bankruptcy appeal before the United States District Court for the Western District of Pennsylvania entitled *In re Pittsburgh Corning Corporation*, Case No. 2:04-cv-1199-DSC. This document was downloaded from the district court's public electronic case filing system.

25. Attached as Exhibit 21 is a true and correct copy of excerpts from the Congressional Record, 140 Cong. Rec. H10752, H10765 (daily ed. Oct. 4, 1994), *available at* 1994 WL 545773.

26. Attached as Exhibit 22 is a true and correct copy of excerpts from the Congressional Record, 140 Cong. Rec. S4521, S4523 (daily ed. Apr. 20, 1994), *available at* 1994 WL 139961.

27. Attached as Exhibit 23 is a true and correct copy of excerpts from the Congressional Record, 140 Cong. Rec. S14461, S14464 (daily ed. Oct 6, 1994), *available at* 1994 WL 553390.

I, Jeffrey M. Boerger, do hereby declare under penalty of perjury that the foregoing is true and correct. Executed on July 13, 2009 at Philadelphia, Pennsylvania.

  
Jeffrey M. Boerger